1977

State of Utah In the Interest of Prisbrey, David (6/3/59) A Person Under Eighteen Years of Age : Appellant's Brief

Utah Supreme Court

Grant M. Prism; Attorneys for AppellantRobert B. Hanson; Attorneys for Respondent

IN THE SUPREME COURT OF T STATE OF UTAH

STATE OF UTAH
In the interest of

PRISBREY, DAVID (6/3/59)
A person under eighteen years of age.

No. 15312

APPELLANT'S BRIEF

Appeal from the Judgment of the Second Juvenile Court District

Honorable John Farr Larson

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STATEMENT OF THE KIND OF CASE

This case seeks to determine whether the proclamation of the Governor establishing a maximum 55 MPH speed limit expired by its own terms prior to the date of the alleged violation by the driver.

DISPOSITION IN LOWER COURT

Judge John Farr Larson determined that the 55 MPH maximum speed limit established by the Utah Governor on January 2, 1974, was still in effect on December 8, 1976. He found the charge against the driver to be true and assessed a fine.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the 55MPH maximum speed limit established by the proclamation of the Utah Governor on January 2, 1974, determined by the Supreme Court to have expired by its own terms prior to December 8, 1976.

STATEMENT OF FACTS

The youthful driver in this case was driving home from work on December 8, 1976. He had entered Interstate 15 headed South from the Fifth South on-ramp in Salt Lake City. The driver was stopped by a Highway Patrol Officer

and referred to the Juvenile Court for exceeding the posted 55 MPH limit.

The attorney for the young person filed a motion to dismiss supported by a memorandum of authorities. The Juvenile Court ruled against the contention of the driver that the 55 mile rule had no force and effect on the 8th day of December, 1976. The Court assessed a fine against the driver and the driver appealed.

POINT 1

THE PROCLAMATION OF THE GOVERNOR OF JANUARY 2, 1974, EXPIRED ON THE BASIS OF ITS OWN PREMISES PRIOR TO DECEMBER 8, 19

The Governor in Utah does not have law making power under the Constitution of Utah. By Article VI, Section 1 of the constitution the legislative power is vested in the legislature and in the people if they exercise the initiative or referendum.

During World War II the Legislature gave power to the Governor to proclaim speed limits to fonform to the recommendations of federal authority time of war or national emergency. This grant of authority is embodied in Section 41-6-46 (4) of the Utah Code.

This is not a transfer of the power of the legislature to make law. Such would be an unlawful delegation of legislative power. This statute essentially gives the Governor administrative rule making power to conform with federal recommendations upon his determination that there is a war or national emergency and there is a recommendation of federal authorities.

On January 2, 1974, the Utah Governor did issue a proclamation. It was the usual proclamation form. It contained whereas clauses. The first where clause referred to Section 41-6-46 (4) of the Utah Code. The second where clause had its foundation in H. R. 11372 of January 2, 1974.

These whereas clauses constitute the logical premises on which the ope

tive language of the proclamation is based. They take the place of the usual fact findings of traditional rule making procedures.

H. R. 11372 did not declare a national emergency. It declared a fuel conservation policy during a period of current and imminent fuel shortage. It used the power of the federal purse to coerce state action to adopt a 55 MPH rule in conformity with the fuel shortage problem. It gave the states 60 days to adopt the limit before the federal bucks would be cut off.

This opportunity suited Governor Rampton. He had proposed a 55 mile limit for urban areas theretofore but his proposal didn't take with the Road Commission or others having powers with respect to speed limits. He issued the proclamation almost before the ink was dry on Richard Nixon's signature on H. R. 11372.

A budget session of the Utah Legislature was set to convene within two weeks. The budget session could have considered the problem and dealt with it inasmuch as it involved important fiscal matters involving the flow of federal highway money into and out of the state coffers.

The Governor made his move after attributing national emergency status to the fuel shortage circumstances.

The Utah Supreme Court sustained the proclamation of the Governor notwithstanding its own observations that the energy crisis was probably not as serious as forecasted. State vs. Foukas, Case No. 14135, filed January 24, 1977. What that case did not tell us was whether the proclamation continued to have validity after its uncertain emergency character at its inception.

H. R. 11372 had an expiration date of June 30, 1975. H. R. 11372 was repealed by Public Law 93-643, Section 154 of Title 23 of the United States Code. This act was approved January 4, 1975.

The statutory foundation of the proclamation of the Governor was theref destroyed by Act of Congress on January 4, 1975.

The federal government kept to its policy of a national 55 mile limit but all references to national emergency or fuel shortage were deleted. Th new legislation required state action pursuant to the new statute. No new action sanctioned by Utah law was taken after January 4, 1975.

In any event the original federal statute defining the fuel shortage as its premise for federal funding control would have expired by its own terms on June 30, 1975. There could have been no valid effect for the Governor's Ru after the termination date of the federal statute on which the Governor pre- mised his action.

This state of affairs leads logically to this question: Does a proclamat of the Governor acquire an independent life of its own that can go on foreve irrespective of changes of circumstance that prompted the proclamation?

It was the position of the trial judge in this case that the proclamation would go on forever unless the Governor himself made a new declaration o repeal.

On the other hand, Judge Christofferson of the District Court of Box Eld County has taken the other position and has ruled that the proclamation is n longer effective because the Arab oil embargo no longer exists. Judge Christofferson so ruled in the case of State Vs. Mansfield, Criminal No. 1722 in the District Court of Box Elder County on August 15, 1977. A notice of appeal has been filed by the Box Elder County Attorney and should be pending in the Supreme Court shortly. The Court will thus be confronted with contrary decisions on this issue from the trial courts.

In this respect it is worth noting that H. R. 11372 itself was framed in

temporary terms. Section 2 (e) of the Act provided that the act would no longer be effective on the date when the President should declare that there was no longer a fuel shortage or June 30, 1975, whichever should occur first.

The legislation was not even passed in a permanent form. It was passed as a resolution and signed by the President but was not even codified in the U. S. Code. The new permanent legislation is codified as Section 154 of Title 23 but it is adopted as a matter of ongoing national policy with no reference to any emergency.

While it is now generally recognized that there must be long term adjustments in energy usage in this country, the plans for the adjustments are generally aiming at supply problems in the mid-nineteen eighties. In the absence of sudden interruption of supply no petroleum crisis is expected until that time. It is the national plan to ease out of heavy petroleum reliance so that the crisis may never arrive.

In the meantime it is the proper function of the Legislature to make permanent laws. There have been four scheduled meetings of the Utah Legislature since H. R. 11372 became effective. There have been one or more special sessions since that time. TheLegislature could have taken permanent action if it had been so inclined.

Actually, the Legislature did enact 55 mile legislation in the 1977 Regular SEssion, but it was vetoed by the Governor. This legislation was H. B. 79.

We are left in the highly unusual circumstance of a legislature having made an effort to comply with the federal statute vetoed by a governor while a governor's proclamation is being enforced by the executive branch and some of the courts. Whatever virtuous motivations the Governor may have or the

Legislature may have, the effect of the present posture is that the executive says we do it my way or not at all. We are thus left in a posture, if the Supreme Court holds the 55 mile proclamation to still be effective, where the Governor makes the law and the Legislature is not permitted to.

I do not mean to impugn two good governors and many conscientious legislators. But we have arrived at a circumstance where we are following neither the letter nor the spirit of our State Constitution. Article V Section 1 of the Constitution of Utah provides that the powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive and the Judicial and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in cases herein expressly directed or permitted.

While the action of the Governor of January 2, 1974, has been sustained by the Supreme Court, it is best that the public action which might be proper in time of crisis should not be allowed to run beyond its proper time to the detriment of our constitutional system. The Supreme Court should determine that the Governor's proclamation became null and void On January 4, 1975 or June 30, 1975. Better logic would suggest the use of the date when H. B. 1 was repealed on January 4, 1975.

POINT II

THE SPEED LIMIT RULE DEBACLE HAS CREATED A SITUATION WHERE NO DRIVER CAN KNOW WHAT LAW IS VIOLATED AND AN ACCUSED IS THUS DENIED DUE PROCESS OF LAW

The Salt Lake Tribune and Deseret News of Wednesday, August 24, 197 carried stories to the effect that the Attorney General had advised highway patrolmen in the First Judicial District to write speed tickets carrying information such that Justice Courts and City Courts could treat the citation as

charging an accused with either violation of the Governor's proclamation or the prima facie speed law. This compounds the confusion surrounding the 55 mile rule. There should be no difference in one district from what goes on elsewhere in the state. The law, whatever it is, is the same statewide and should be enforced the same way statewide. We are not dealing with a pornography case where some local standards may be applied.

This procedure is especially bad because it leaves the public grossly confused. The proclamation of the Governor is either valid or it is not valid. Policemen, prosecutors and judges should not be offered a smorgasbord from which they can select a basis for a charge. Due process requires that the accused should know of the claim against him without being subjected to a game of official roulette in looking for a legal peg to hang a charge on. If the Legislature had made the law, there would be no need for every policeman, prosecutor or judge to make the law.

While this current recommendation of the Attorney General has no bearing on this case, it is symptomatic of what has been happening all along. After the proclamation of the Governor, someone in official circles must have had some doubt. On January 25, 1974, the State Road Commission approved a resolution declaring a 55 MPH rule pursuant to Section 27-12-121 of the Utah Code. The Highway Commission moved again in 1975 after the repeal of H. R. 11372. On May 23, 1975, it again resolved that the speed limit should be 55 MPH at a maximum pursuant to Section 27-12-121 of the Utah Code and reciting the Act of Congress of January 4, 1975.

In the case before Judge Christofferson, the Mansfield case, Judge Christofferson had originally ruled that Mansfield could be tried on a 55 mile rule, but that the 55 mile limit would be a prima facie limit. In doing so he expressed his approval of a learned memorandum of the Honorable Bryant H.

Croft, dated March 17, 1975, in the District Court of Salt Lake County. Th memorandum resulted from the cases of State ve. Andreini and State Vs. H Cr. Nos. 27436 and 27034. Judge Croft ruled that the proclamation of the Governor was invalid but that he considered the action of the Road Commis having established a 55 MPH prima facie speed limit.

After the Supreme Court Ruling in the Foukas case, the complaint against Mansfield was amended to charge him with a violation of the Gover Proclamation which Judge Christofferson then ruled was no longer effective

In another case before Judge Cornaby of the Layton City Court, the Judg followed the Croft theory with his own variation that while the 55 MPH rule was a prima facie rule, that the State would have the burden of proving the unreasonableness of speed in excess of 55 MPH. This was in the Case of State Vs. Mansfield, no case number. The decision was dated December 1 1975. The state then declined to proceed in the case and the case was drop

Recent news storied tell of Provo City Judges disposing of 55 MPH case as fuel wasting cases because of their concern with the 55 MPH rule.

The point of this recitation is that the official action of the Governor and the Highway Commission has created a situation of legal chaos such th these learned judges have all come up with an array of different results tha demonstrate that it has been inherently impossible for anyone to know what the speed limit has been during various times since January 2, 1974. If these good judges could come up with their varying reactions to the 55 MPH rule, where is the average citizen to find simple, clear guidelines as to what the speed law was in Utah.

An inherently vague state of affairs has resulted which demonstrates the vague nature of the rule. This makes the rule void for vagueness unde

Article I Section 7 of the Utah Constitution and under Amendments V and XIV of the Federal Constitution.

POINT III

THE STATE ITSELF APPARENTLY DOESN'T REALLY BELIEVE THAT THE GOVERNOR'S PROCLAMATION IS VALID

On the 26th day of August, 1977, the Highway Commission passed an emergency resolution establishing a new 55 MPH rule. They presumably based the rule on certain data from the Federal Department of Transportation which tended to show that their had been fewer road deaths since the 55 Mile Rule had been in effect. This was apparently a pretense at coming up with a prima facie 55 Mile Rule based on some sort of traffic study. The action was apparently a holding action to keep the public from driving faster until the next Legislature can meet and take care of the problem. This action of the Commission is undoubtedly void and is undoubtedly based on its fear of losing federal funds rather than on a reasoned reaction to highway safety

The point of this reference, however, is that the State itself apparently does not really believe the Governor's Proclamation to still be in effect and has rushed in to fill its pending financial vacuum.

CONCLUSION

The Supreme Court should reverse the decision of the Second District Juvenile Court and direct dismissal of the charge against the young person.

Respectfully submitted

GRANT M. PRISBREY
Attorney For Appellant

I hereby certify that I delivered _____ copies of this brief to the office of the Attorney General on the _____ day of _____, 1977.